

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GRACE BRIGGS,

Plaintiff,

V.

JUUL LABS INC.

Defendant.

Case No. 21-cv-08811-JSC

ORDER GRANTING DEFENDANT'S MOTION TO TRANSFER VENUE

Re: Dkt. No. 10

Grace Briggs alleges that JUUL Labs, Inc. discriminated, harassed, and retaliated against her during the course of her employment. JUUL’s motion to transfer the case pursuant to 28 U.S.C. § 1404(a) is now pending before the Court.¹ (Dkt. No. 10.) After carefully considering the parties’ written submissions, and having had the benefit of oral argument on March 17, 2022, the Court concludes that transfer to the Eastern District of North Carolina is appropriate.

BACKGROUND

A. Factual Allegations

Grace Briggs, a former JUUL employee, resides in Smithfield, North Carolina. (Dkt. No. 1 ¶¶ 1, 6.)² She is a 51-year-old African American woman who began working for Juul in September 2017. (Dkt. No. 1 ¶¶ 6, 23.) When JUUL hired Ms. Briggs, JUUL's headquarters were in San Francisco, California, but JUUL has since moved its headquarters to Washington D.C. (Dkt. No. 10-2 ¶ 3.)

¹ All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 7, 8.)

² Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 JUUL hired Ms. Briggs as a Senior Quality Engineer, and she is highly skilled in
2 microbiology and quality analysis. (Dkt. No. 1 ¶¶ 23, 27.) Ms. Briggs reported to, received
3 directions from, and communicated with JUUL’s San Francisco office. (Dkt. No. 1 ¶¶ 34, 36, 50,
4 89, 91; Dkt. No. 18 at 8-10.) However, Ms. Briggs actually worked from her home in Smithfield,
5 North Carolina and at the AsteelFlashGroup (“AFG”) facility in Raleigh, North Carolina. (Dkt.
6 No. 1 ¶¶ 36, 199, 210.)

7 Ms. Briggs alleges that throughout her employment she was repeatedly harassed,
8 discriminated against, and retaliated against for her race, age, disability, and for reporting illegal
9 practices. (Dkt. No. 1 ¶ 1.) Ms. Briggs would send reports of the incidents she experienced along
10 with quality reports to the San Francisco office. (Dkt. No. 1 ¶¶ 34, 36, 50, 89, 91; Dkt. No. 18-4 at
11 4, 6, 8, 10.) She also spoke with several employees at the San Francisco office either to receive
12 instructions on what work she should be doing or to report the harassment and discrimination she
13 experienced at the AFG facility. (Dkt. No. 1 ¶¶ 75-76, 88, 91-93 119, 141-43, 149-53, 222.)

14 All of the incidents that Ms. Briggs reported back to San Francisco occurred at the AFG
15 facility or while Plaintiff was working from home in North Carolina. First, in April of 2018, the
16 California office instructed her to provide quality checks at the products in the AFG facility. (Dkt.
17 No. 1 ¶ 50.) Ms. Briggs, accompanied by Mr. McIver, an African American contractor hired to
18 assist Plaintiff, arrived at the facility and were led to the line to conduct their inspection.
19 (Dkt. No. 1 ¶¶ 31-32, 52-54.) Shortly after arriving, Ms. Marie Robinson, the Quality Assurance
20 Supervisor at AFG, approached them, began questioning them, and attempted to get them to leave
21 before two officers with firearms approached Plaintiff and Mr. McIver. (Dkt. No. 1 ¶¶ 56-60.)
22 They were then escorted to an office where they were held for several hours despite white
23 employees walking the floor freely. (Dkt. No. 1 ¶¶ 50, 58-61, 65-67.) They were eventually
24 permitted to leave; however, Plaintiff was so shaken by this experience that she developed Post-
25 Traumatic Stress Disorder (“PTSD”). (Dkt. No. 1 ¶ 77.)

26 The “the harassment and discrimination continued” at the AFG facility after that. (Dkt.
27 No. 1 ¶ 79.) Ms. Briggs reported other subsequent violations to Joanna Engelke, Ms. Brigg’s
28 supervisor, and to Human Resources. (Dkt. No. 1 ¶ 219-22.)

1 Ms. Briggs also alleges she was retaliated against for observing and reporting
2 contaminated and non-compliant JUUL products. (Dkt. No. 1 ¶¶ 43-46.) Ms. Briggs quickly
3 noted numerous health and safety hazards: the nicotine was not “controlled, properly inspected,
4 finished or monitored;” the nicotine was not being disposed of properly; there were numerous
5 blood-related contamination issues; the products contained bugs and were mislabeled; and more.
6 (Dkt. No. 1 ¶ 83, 87, 90, 93, 95-97, 99, 102-103, 105, 110, 114-115, 119, 180.) She reported these
7 incidents repeatedly. Plaintiff informed AFG manager Celeste Zippetell, Mr. deSouza, the
8 Director of Quality & Manufacturing Engineering, who directed Ms. Briggs on certain issues, and
9 stakeholders in California about the nicotine issues. (Dkt. No. 1 ¶¶ 84, 88-91, 126.) Marie
10 Robinson, the Quality Assurance Supervisor that had her removed from the line previously,
11 insisted that the lines did not need to stop running for cleaning despite Ms. Briggs’ reports and
12 prevented Ms. Briggs from doing her job. (Dkt. No. 1 ¶ 89, 127-28, 148, 154-56, 157, 159.) Ms.
13 Briggs “abruptly stopped receiving the significant praise and accolades” and was met with
14 hostility, opposition, and resistance after reporting all of the safety and health issues along with
15 her issues with Ms. Robinson. (Dkt. No. 1 ¶¶ 149-54, 163, 168.) Later, Plaintiff expressed her
16 concerns about the quality of the products with new Quality Assurance Manager, Keri Calero;
17 however, Ms. Calero and Ms. Robinson would “openly walk out of meetings when they did not
18 like the information or facts regarding non-conformance issues” and questioned Ms. Briggs’
19 cleaning suggestions. (Dkt. No. 1 ¶¶ 169-71, 174-76.) Eventually, AFG told Ms. Briggs it no
20 longer wanted her on site at its North Carolina facility and that she was to work from home. (Dkt.
21 No. 1 ¶¶ 189, 192-93.)

22 In May 2018, Ms. Briggs suffered a traumatic brain injury and concussion and was
23 permitted to leave under the Family and Medical Leave Act before continuing to work from home.
24 (Dkt. No. 1 ¶¶ 197-99.) On January 7, 2019, she was permitted to return to the line, but she was
25 questioned by Damien Reverte upon her return and told to leave. (Dkt. No. 1 ¶¶ 200-204.) Later
26 that same day, Ms. Briggs had a meeting with her supervisor and was informed that she would be
27 working from home on a project for JUUL’s Asia market. (Dkt. No. 1 ¶¶ 207-10.) Ms. Briggs
28 was not cleared by her doctor to fly due to her PTSD; however, she was told that there was no

1 more work for her in North Carolina, so she began working from home and flying out to facilities.
2 (Dkt. No. 1 ¶¶ 213, 217, 227-31.) Despite continuing to perform well, JUUL fired Ms. Briggs on
3 November 13, 2019. (Dkt. No. 1 ¶¶ 218, 243-49.) She was 41 years old at the time. (Dkt. No. 1 ¶
4 249.) Marcus Gesner, former Vice President, Supply Chain Quality, who resided in
5 Massachusetts, made the decision to terminate Ms. Briggs' employment. (Dkt. No. 10 at 11; Dkt.
6 No. 10-3 ¶ 8.)

7 **B. Procedural Background**

8 On November 12, 2021, Ms. Briggs filed her complaint alleging the following 14 claims:
9 (1) violation of Title VII of the Civil Rights Act of 1964 (Count I); violation of the Americans
10 with Disabilities Act (Count II); violation of the Age Discrimination in Employment Act (Count
11 III); violation of the California Fair Employment Housing Act (Count IV); violation of the Civil
12 Rights Act of 1866 (Count V); violation of the Family and Medical Leave Act (Count VI);
13 violation of California Labor Code § 1102.5 (Count VII); violation of Employee Income Security
14 Act of 1974 (Count VIII); violation of Employee Retirement Income Security Act of 1974 (Count
15 IX); breach of contract (Count X); breach of duty of good faith and fair dealing (Count XI); unjust
16 enrichment in alternative to Count X and XI (Count XII); promissory estoppel in alternative to
17 Count X and XI (Count XIII); and violation of California Labor Code § 204 (Count IV). (Dkt. No
18 1 at 34-47.) She requests damages, injunctive relief, and her attorney's fees and costs.

19 JUUL subsequently filed the pending motion to transfer. (Dkt. No. 10.)

20 **DISCUSSION**

21 “[A] district court may transfer any civil action to any other district or division where it
22 might have been brought” if it is “[f]or the convenience of parties and witnesses, in the interest of
23 justice.” 28 U.S.C. § 1404(a). JUUL, as the moving party, bears the burden of showing that
24 transfer is warranted. *See Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270, 279 (9th
25 Cir. 1979).

26 **A. Venue is Proper in North Carolina**

27 Ms. Briggs could have brought this case in the Eastern District of North Carolina. Venue
28 is proper there because venue is proper where the defendant resides. 28 U.S.C. § 1331(b)(1). For

1 purposes of the venue statute, a corporation resides “in any judicial district in which [the defendant
2 corporation] is subject to the court’s personal jurisdiction with respect to the civil action in
3 question.” 28 U.S.C. § 1391(c)(2). JUUL is subject to personal jurisdiction in the Eastern District
4 of North Carolina because Ms. Brigg’s claims arise out of JUUL’s contacts with North Carolina;
5 namely, North Carolina is where JUUL employed Ms. Briggs and where she experienced the
6 discrimination, harassment, and retaliation. *See Helicopteros Nacionales de Colombia, S.A. v.*
7 *Hall*, 466 U.S. 408, 414 n.8, (“Specific [personal] jurisdiction exists when a case ‘aris[es] out of or
8 relate[s] to the defendant’s contacts with the forum.’”). Venue is also proper where “a substantial
9 part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(b)(2). The
10 complaint’s allegations establish that a substantial part of the events or omissions occurred in the
11 Eastern District of North Carolina where Ms. Briggs worked the entire time at issue in her
12 complaint.

13 **B. Transfer is Appropriate**

14 Having determined that Ms. Briggs could have filed in North Carolina, the next question is
15 whether the Court should transfer the case to her home state. District courts adjudicate motions
16 for transfer according to an “individualized, case-by-case consideration of convenience and
17 fairness.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (cleaned up). In
18 determining convenience and fairness, courts generally consider the following factors, as relevant:
19

- 20 (1) the location where the relevant agreements were negotiated and
21 executed, (2) the state that is most familiar with the governing law,
22 (3) the plaintiff’s choice of forum, (4) the respective parties’ contacts
23 with the forum, (5) the contacts relating to the plaintiff’s cause of
action in the chosen forum, (6) the differences in the costs of litigation
in the two forums, (7) the availability of compulsory process to
compel attendance of unwilling non-party witnesses, and (8) the ease
of access to sources of proof.

24
25 *Jones*, 211 F.3d at 498–99. “No single factor is dispositive;” instead, “[w]eighting of these factors
26 for and against transfer involves subtle considerations and is best left to the discretion of the trial
27 judge.” *Chess v. Romine*, No. 18-CV-05098-JSC, 2018 WL 5794526, at *5 (N.D. Cal. Nov. 2,
28 2018). The Court finds that on balance the relevant factors warrant transfer.

1 First, although Ms. Brigg's decision to file in this District is given some weight, because
2 she does not reside in this District, did not reside in this District when the conduct she challenges
3 occurred, and nearly all of the challenged conduct occurred in North Carolina where she was
4 employed, her choice to file in California is given less weight. *See Vu v. Ortho-McNeil Pharm., Inc.*,
5 602 F. Supp. 2d 1151, 1156 (N.D. Cal. 2009); *see also Ayco Farms, Inc. v. Ochoa*, 862 F.3d
6 945, 949-50 (9th Cir. 2017) (stating that deference to a plaintiff's choice of forum is "far from
7 absolute") (cleaned up)). Ms. Briggs' emphasis on the allegations that she was given instructions
8 from JUUL's former San Francisco headquarters and that the retaliatory decisions were made in
9 San Francisco (Dkt. No. 1 ¶¶ 36, 50, 89, 91) does not persuade the Court that her decision to file
10 suit nearly 3,000 miles from her home and former employment should control.

11 Second, on balance, the remaining relevant factors favor transfer. All of the incidents
12 about which Ms. Briggs complains occurred in North Carolina, either at the AFG facility in
13 Raleigh, North Carolina or when she was working from her home in Smithfield, North Carolina.
14 For example, she observed the allegedly contaminated and non-compliant JUUL products in North
15 Carolina and she reported her observations to her Quality Assurance Supervisor in North Carolina.
16 (Dkt. No. 1 ¶¶ 82-84, 90-103, 106, 110, 114-15, 119, 123-28, 157, 169-72.) Further, she
17 developed PTSD because of an April 2018 event at the AFG facility in North Carolina. (Dkt. No.
18 1 ¶¶ 77-78.) While Ms. Briggs alleges that she reported these incidents to San Francisco
19 headquarters, the incidents occurred in North Carolina. (Dkt. No. 1 ¶¶ 36, 50, 89, 91.)

20 The convenience of witnesses weighs strongly in favor of transfer. *See Jackson v.*
21 *Euphoria Wellness, LLC*, 2020 WL 5366419, *9 (N.D. Cal. Sept. 8, 2020) (convenience of
22 witnesses is one of the most important factors in a motion to transfer). Most of the individuals
23 identified in Ms. Briggs' complaint reside in North Carolina: Charles McIver, Christopher Jones,
24 Maria Robinson, Rob Morehead, Celeste Zippetell, Keri Calero, Damien Reverte, AFG
25 Management, AFG QA Team, line workers, security, and Ms. Briggs' doctor for her medical leave
26 claims. (Dkt. No. 1 ¶¶ 31-32, 36, 59, 64, 84-85, 94, 110, 126, 160, 169-71, 176, 186-88, 190; Dkt.
27 No. 10-3 ¶¶ 5, 6; Dkt. No. 10-2 at 14-17.) Further, witnesses cannot be compelled to attend trial
28 unless they can be served with subpoenas within the trial district, or at any place outside of the

1 district that is within 100 miles of the place of trial. Fed. R. Civ. P. 45(e). Ms. Briggs offers no
2 explanation as to how these many percipient witnesses could be compelled to travel across the
3 United States to attend trial in San Francisco. They cannot.

4 Two other witnesses, Joanna Engelke, Ms. Briggs' supervisor, and Marcus Gesner, the
5 purported decisionmaker with regard to Ms. Briggs' termination, both resided in Massachusetts,
6 on the same coast as North Carolina, at the time of the termination decision. (Dkt. No. 10-2 ¶ 5;
7 Dkt. No. 10-3 ¶ 2, 4, 8.) JUUL represents that if the case is transferred to North Carolina, it will
8 make its employees available in North Carolina as necessary. (Dkt. No. 10 at 21.) Additionally,
9 Ms. Engelke attests that North Carolina is far more convenient for her than California. (Dkt. No.
10 10-3 at 3.)

11 In her opposition to the motion to transfer, Ms. Briggs identifies additional witnesses
12 relevant to her age, disability, and wage discrimination claims: Mr. Lim, Mr. deSouza, Mr. Ferkol,
13 and Ms. Kastner. (Dkt. No. 18 at 22.) She contends each resides in California. (Dkt. No. 18-4 at
14 4, 6, 8, 10.) Mr. deSouza is alleged to be a person whom she alerted about the product quality
15 issues and Mr. Lim is the person to whom she complained about repeated discrimination. (Dkt.
16 No. 1 ¶¶ 75-76, 91, 119.) Mr. Ferkol and Ms. Kastner allegedly initially offered praise and
17 recognition to Ms. Briggs (Dkt. No. 1 ¶ 141), but Ms. Briggs does not otherwise explain what
18 material testimony they may possess besides saying that she "reported to the San Francisco
19 office." (Dkt. No. ¶ 36.) Thus, while there may be a trickle of California witnesses, the vast
20 majority of the witnesses reside in North Carolina or outside California. Therefore, the
21 convenience of witnesses favors North Carolina over California.

22 Ms. Briggs' insistence that California is nonetheless a convenient forum because her
23 employment agreement is governed by California law is misplaced. Her offer letter does not state
24 what law governs her employment. (Dkt. No. 18-2 at 2-4.) The letter does incorporate a
25 "Proprietary Information and Invention Assignment Agreement," which states that it is governed
26 by California law and includes a Northern District of California forum selection clause. The
27 clause and governing law provision, however, are limited to "disputes arising out of or relating to
28 this Agreement" (*id.* at 8); that is, disputes arising out the Proprietary Information and Invention

1 Agreement. Ms. Briggs' claims do not arise out of that Agreement and thus that provision is
2 inapplicable. There is thus nothing in the record that supports a finding that her employment
3 agreement is governed by California law.

4 That Ms. Briggs makes claims under California law does weigh in favor of keeping the
5 case here. *Jones*, 211 F.3d at 498 (one issue on a 1404(a) motion is which state is more familiar
6 with the governing law). However, Ms. Briggs also brings claims under federal law, including
7 Title VII. A Title VII claim may be brought in one of three places: (1) "in any judicial district in
8 the State in which the unlawful employment practice is alleged to have been committed"; (2) "in
9 the judicial district in which the employment records relevant to such practice are maintained and
10 administered"; or (3) "in the judicial district in which the aggrieved person would have worked but
11 for the alleged unlawful employment practice[.]" 42 U.S.C. § 2000e-5(f)(3); *Passantino v.*
12 *Johnson & Johnson Consumer Prod., Inc.*, 212 F.3d 493, 506 (9th Cir. 2000) ("In general, the
13 effect of Title VII's venue provision is to allow suit in the judicial district in which the plaintiff
14 worked or would have worked.").

15 Ms. Briggs' Title VII claim alleges discrimination, harassment and retaliation. (Dkt. No. 1
16 ¶ 271.) The complaint's allegations establish that nearly all of that conduct occurred in North
17 Carolina, for the reasons explained above. Employment records are not maintained in California,
18 (Dkt. No. 10-2 ¶ 5), and Ms. Briggs does not allege that she would have worked in California.
19 Further, JUUL offers evidence that the employment decisions as to Ms. Briggs' employment were
20 not made in California. (Dkt. No. 1-2 ¶ 7-8; Dkt. No. 10-2 at 17-19.) Thus, there is a serious
21 question whether venue of the Title VII claim is proper in this District. The presence of that claim
22 thus weighs in favor of transfer.

23 CONCLUSION

24 Weighing the relevant *Jones* factors above, the Eastern District of North Carolina, where
25 the case could have been brought, is a far more convenient venue. Ms. Briggs and most of the
26 witnesses reside there. Nearly all of the challenged conduct occurred there. And JUUL is no
27 longer headquartered in this District. The Court accordingly GRANTS JUUL's motion to transfer
28 to the Eastern District of North Carolina on the condition that JUUL make its employees available

1 to testify at trial in North Carolina, as it represented it would do in its motion papers. (Dkt. No. 10
2 at 21).

3 **IT IS SO ORDERED.**

4 Dated: 03/29/2022


5 JACQUELINE SCOTT CORLEY
6 United States Magistrate Judge

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United States District Court
Northern District of California